

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New York Independent System Operator, Inc.) Docket No. EL11-42-000

**PRELIMINARY ANSWER OF
THE NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure,¹ the New York Independent System Operator, Inc. ("NYISO") respectfully submits this Preliminary Answer to the *Complaint Requesting Fast Track Processing* ("Complaint") that was submitted in this proceeding on June 3, 2011. This pleading addresses only the Complainants' request for fast track processing. It explains why the Commission should: (i) allow the standard twenty day period for answers to and comments on the Complaint; and (ii) take no action until after it has considered such answers and comments. The NYISO will submit a substantive answer to the other elements of the Complaint by whatever deadline is established by the Commission.

I. COMMUNICATIONS

Communications regarding this proceeding should be addressed to:

Robert E. Fernandez, General Counsel
Raymond Stalter, Director of Regulatory Affairs *
Gloria Kavanah, Senior Attorney
New York Independent System Operator, Inc.
10 Krey Boulevard
Rensselaer, NY 12144
Tel: (518) 356-6103
Fax: (518) 356-7678
rfernandez@nyiso.com
rstalter@nyiso.com
gkavanah@nyiso.com

* Ted J Murphy
Vanessa A. Colón
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 955-1588
Fax: (202) 778-2201
tmurphy@hunton.com
vcolon@hunton.com

*Designated for receipt of service.

¹ 18 C.F.R. § 385.213 (2011).

II. PRELIMINARY ANSWER

Complainants seek fast track processing under Commission Rule 206(b)(11) and (h). They fail to specify exactly what they imagine fast track processing should mean in this proceeding but are clearly seeking “expedited action” to impose sweeping changes to the NYISO’s tariff and relationship with its market monitoring unit, as well as an unprecedented interruption of the NYISO’s interconnection cost allocation process. Complainants likewise do not indicate how much time, if any, they believe that the NYISO, and other stakeholders, should be afforded to respond to their assorted claims. Given their assertion that the Commission must act before the NYISO completes new mitigation exemption and Offer Floor² determinations, which they state may be finalized as early as July 10, 2011,³ the implication appears to be that the time for filing answers and comments should be shortened.

To the extent that the Complaint is seeking an abbreviated answer or comment period that request should be denied.⁴ Similarly, the Commission should not act on the Complaint’s request that the NYISO’s Class Year cost allocation process be suspended until it has the benefit of a complete record that includes responsive pleadings developed during the standard response period.

Rule 206(b)(11) places the burden on Complainants seeking fast track processing to “[e]xplain why the standard processes will not be adequate for expeditiously resolving the complaint.” Commission precedent is clear that fast track processing is not suited for “complex

² Capitalized terms that are not defined herein shall have the meaning specified in Attachment H to the NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”).

³ Complaint at 19.

⁴ The NYISO would have no objection if the Commission were to decide for its own reasons to act on the Complaint faster than the 60-90 days after the filing of responsive pleadings than is contemplated under its “standard” complaint resolution path. *See* <<http://www.ferc.gov/legal/complaints/form-comp/comp-resolution.asp>>. Complainants have failed, however, to justify such action under the fast track processing rules.

issues” especially when a complainant seeks changes to tariff provisions that it alleges are unjust, unreasonable, unduly discriminatory or otherwise in violation of Commission regulations or policy.⁵ Complainants must make “a highly credible claim and persuasive showing that standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief.”⁶ Fast track processing is to be employed only under such limited circumstances because “of the extraordinarily compressed time schedule that would place a heavy burden on all parties to the proceeding” and the potential for over-taxing the Commission’s limited resources.⁷

It is obvious that the Complaint raises complex issues that are not suited for fast track processing. As the Commission is well aware, buyer-side capacity market mitigation issues in the organized markets have invariably proven to be both difficult and contentious. The Complainants themselves have previously argued that the inherent complexity of buyer-side mitigation issues justified filing answers that would normally be prohibited under the Commission’s rules,⁸ or giving them additional time to respond to proposed tariff revisions.⁹ Given what Complainants have said in the past, they cannot plausibly suggest here that shortening the comment period would be appropriate when to do so would necessarily result in a less complete record and a less well-informed Commission decision.

⁵ *Amoco Energy Trading Corp., et al.*, 89 FERC ¶ 61,165 (1999).

⁶ See “Fast Track Procedures” (Updated June 28, 2010) <<http://www.ferc.gov/legal/complaints/form-comp/fast-track.asp#skipnav>>.

⁷ *Complaint Procedures*, Order No. 602, FERC Stats. & Regs. ¶ 31,071 at 30,766 (1999).

⁸ See, e.g., *Motion for Leave to File Answer and Answer of the New York City Suppliers*, Docket No. ER10-3043 at 5 (November 12, 2010). The “New York City Suppliers” are the same entities as the Complainants.

⁹ See *Motion to Intervene and for Extended Comment Deadline of Independent Power Producers of New York, Inc.*, Docket No. ER10-3043 at 5 (October 1, 2010) (“IPPNY and other interested parties should be afforded a reasonable amount of time to consult with experts and prepare thorough comments for the Commission to consider, particularly since there are complex and important issues involved.”) The NYISO understands that all of the Complainants are members of IPPNY.

In addition, the Complaint asserts that there should be numerous tariff changes; therefore, consistent with precedent, it should not be fast tracked. Complainants expressly ask that the NYISO be directed to “clarify” the Services Tariff to effectuate their various asserted “corrections” or to provide greater “transparency” and “objectivity” where it is supposedly needed.¹⁰ They also call for changes to the division of monitoring functions between the NYISO’s independent market monitoring unit and internal Market Mitigation and Analysis Department that would appear to require revisions to both Attachments H and O of the Services Tariff.¹¹ Moreover, as the NYISO intends to explain in its substantive answer, the Complainants do not acknowledge within their Complaint that they have made various other requests for relief that would require tariff revisions, or a fundamental re-interpretation of existing tariff provisions.

Complainants have more generally failed to carry their burden of demonstrating that “standard processes will not be capable of resolving the complaint promptly enough to provide meaningful relief.”¹² They begin by claiming that “expeditious action will provide much needed certainty to all market participants and ensure that new entrants are making informed decisions about entry.”¹³ But it is their own decision to seek immediate and extraordinary action from the Commission that is the cause of any potential uncertainty. Complainants add that prompt action is necessary to prevent prospective new entrants from claiming a reliance interest on alleged potentially erroneous NYISO exemption determinations.¹⁴ They immediately proceed, however, to undermine their own argument by contending that the mere fact that they have filed the

¹⁰ See, e.g., Complaint at 6. See also Complaint at n. 6 (requesting that the Commission declare various Services Tariff provisions to be unjust and unreasonable to the extent that Complainants’ interpretation of them is deemed to be incorrect).

¹¹ Complaint at 6.

¹² See *supra* n. 6.

¹³ Complaint at 7.

¹⁴ Complaint at 48.

Complaint will minimize any possible detrimental reliance concerns.¹⁵ Even if their argument did not contain this internal contradiction it would lack merit because it presumes that the NYISO is likely to make erroneous determinations. The NYISO will explain in its substantive answer that any such assumption is unfounded. It would be unreasonable, and inconsistent with due process, for the Commission to accept Complainants' presumption at face value without giving the NYISO a full opportunity to respond.

Complainants' request that the NYISO's Class Year cost allocation process should immediately be held in abeyance pending a resolution of their Complaint is based on the same untested presumption. The Commission should not take such a drastic action, which would interrupt and delay the interconnection process for all new generation and transmission projects in New York State, without allowing the NYISO and all potentially affected parties the standard twenty days to file answers and comments.

Finally, Complainants' suggestion that the NYISO has no basis for objecting to the "comparatively minor" burdens associated with fast track processing is wholly without merit. Commission precedent is clear that fast track processing imposes a heavy burden on both the parties and the Commission. Furthermore, it would be inequitable to afford the Complainants, who gave the NYISO no indication of their intent to file the Complaint until the day that it was submitted (although it now appears likely that they were preparing it for some time), an unfair litigation advantage by shortening the time that the NYISO and others will have to respond.

III. CONCLUSION

For the reasons set forth above the NYISO respectfully requests that the Commission:

(i) adopt the standard twenty day answer and comment period in this proceeding; and (ii) take no

¹⁵ *Id.*

action on Complainants' request that the Class Year cost allocation process be held in abeyance until it has reviewed answers and comments.

Respectfully Submitted,

/s/Ted J. Murphy

Ted J. Murphy

Counsel to the

New York Independent System Operator, Inc.

June 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 6th day of June, 2011.

/s/Ted J. Murphy

Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20426
(202) 955-1500